

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT THE HIGH COURT 9 GUDU, ABUJA

BEFORE HIS LORDSHIP: **HON. JUSTICE A.M TALBA**

SUIT NO: FCT/HC/CR/110/2017
ON THE 2ND DAY OF MAY, 2007

BETWEEN

FEDERAL REPUBLIC OF NIGERIA-----COMPLAINANT/RESPONDENT

AND

ONWUKA LAMBERT & 2ORS -----DEFENDANT/APPLICANT

JUDGMENT

Three defendants were arraigned before this court namely;

1. Onwuka Lambert
2. Omachunu Monday
3. Munir Adamu

They were arraigned on a four count charge which reads.

Count 1

That you Onwuka Lambert, Omachunu Monday and Munir Adamu on or about 14th day of May, 2007 in Abuja within the Judicial Division of the High Court of the Federal Capital Territory with intent to defraud obtained the sum of N500, 000; 00 (Five Hundred Thousand Naira) from Engr. Agomuo Nicholas of plot 40 opposite Model Primary School Garki Abuja by false pretence to wit falsely representing to him that by your position as a staff of FCDA Abuja you demanded the said sum for onward payment to the Federal Government to enable you get a re-instatement letter in respect of plot No 50 Cadastral Zone B03 Wuye District Abuja bearing Pricillia A. Dattit which was earlier revoked by the Minister FCT and which you knew you were not in the capacity to do that and thereby committed an offence contrary to section 1 (1) (a) of the Advance Fee Fraud and

other Fraud Related Offences Act 2006 and punishable under section 1 (3) of the same Act.

Count 2

That you Onwuka Lambert, Omachunu Monday and Munir Adamu on or about 14th day of May, 2007 in Abuja within the Judicial Division of the High Court of the Federal Capital Territory did conspire among yourselves to do an illegal act to wit; forgery of a document titled "Federal Capital Territory Abuja (Re-installment letter) reference No. FCDA/AGIS/S/P/2007 in respect of plot No. 50 Cadastral Zone B03 Wuye District bearing Pricilla A. Dattit and thereby committed an offence contrary to section 96 (1) of the Penal Code Act Cap 532 laws of the Federation of Nigeria (Abuja) 1990 and punishable under section 364 of the same Act.

Count 3

That you Onwuka Lambert, Omachunu Monday and Munir Adamu on or about 14th day of May, 2007 in Abuja within the Judicial Division of the High Court of the Federal Capital Territory did fraudulently make a document titled "Federal Capital Territory Abuja (Re-instatement letter) reference No FCDA/AGIS/S/P/2007 in respect of plot No 50 Cadastral Zone BO3 Wuye District bearing Pricillia A. Dattit with the intention of causing it to be believed that the said document was made by the FCDA which you knew did not make it and thereby committed an offence punishable under section 364 of the Penal Code Act Cap 532 Laws of the Federation (Abuja) 1990.

Count 4

That you Onwuka Lambert, Omachunu Monday and Munir Adamu on or about 14th day of May, 2007 in Abuja within the Judicial Division of the High Court of the Federal Capital Territory did fraudulently use as genuine a forged document titled "Federal Capital Territory Abuja (Re-instatement letter) reference No. FCDA/AGIS/S/P/2007 in respect of Plot No 50 Cadastral Zone BO3 Wuye District bearing Pricillia A. Dattit which you knew to be forged by same to one Engr. Agomuo Nicholas and thereby committed an offence contrary to section 366 of the Penal Code Act Cap 532 LFN Abuja 1990 and punishable under section 364 of the same Act.

The three defendants pleaded not guilty to all the four count charge. The prosecution called six witnesses and also tendered in evidence the following Exhibits;

1. Exhibit A1 the statement of the 1st defendant Onwuka Lambert.
2. Exhibit A2, the statement of the 1st defendant Onwuka Lambert.
3. Exhibit B FCTA letter headed paper addressed to pricillia A. Datit. It is the alleged forged document.
4. Exhibit C, the statement of Husseni A. Ismail PW4.
5. Exhibit D the statement of Omachinu Monday 2nd defendant.
6. Exhibit E the statement of Munir Adamu 3rd defendant.
7. Exhibit F the statement of Onwuka Lambert 1st defendant.
8. Exhibit G FCTA letter headed paper titled "Re-statement of Right of Occupancy No KN 882 (AD 106 26).

The prosecution closed their case on the 5th June 2012, and the case was adjourned for defence. Thereafter the case was transferred out of this court and retransferred back in 2015. When the case was brought back to this court two of the defendants had jumped bail. ie Omachunu Monday and Munir Adamu. When effort to arrest them proved abortive, the learned prosecution counsel made an application pursuant to section 352 (14) of the ACJA 2015 for the matter to proceed in the absence of the 2nd and 3rd defendants. Upon the grant of the said application the counsel to the 1st defendant Onwuka Lambert, filed a no case submission. The court overruled the no case submission and the 1st defendant was called upon to enter his defence.

At this stage the learned prosecution counsel filed a motion on notice seeking for an order to re-open the prosecution case. There was no opposition from the defence and same was granted. Thereafter PW7 testified and her statement was also admitted in evidence as Exhibit H. And the prosecution finally closed its case on the 27th June 2016.

Learned counsel for the 1st defendant filed a motion for the recall of PW6 for further Cross-examination. There was no opposition from the prosecution and same was granted. PW6 was recalled and he was further Cross-examined and re-examined.

On the whole, the prosecution called 7 witnesses and tendered 9 Exhibits in evidence. The case of the prosecution is that PW2 Engr. Agomo Nicholas bought a plot of land described as plot No 50 Wuye District sometime in 2005. He bought the plot from one Mr. J.J. Aluko, an Assistant Director Foreign Operations CBN. The plot has its Original allottee as pricillia A. Datit. When Engr. Agomo Nicholas (PW2) submitted his building plan at the Development control for approval, he was told by the site officer that there was a revocation order, therefore the building plan could not be processed. He now consulted his lawyer who wrote a letter to the Hon. Minister FCT for reconsideration of the revocation since Wuye District had no infrastructure. Engr. Nicholas (PW2) informed some of his friends about his predicament including Mazi Emmanuel (PW3). Mazi Emmanuel (PW3) told Engr. Nicholas (PW2) that he knows one Lambert Onwuka who works with FCDA and who could help him follow up the letter to the Minister. Mazi Emmanuel (PW3) called Lambert Onwuka (1st defendant) and introduced him to Engr. Nicholas (PW2). Then Lambert Onwuka (1st Defendant) promised to assist to get the re-instatement letter. After some few days Lambert Onwuka (1st Defendant) called Engr. Nicholas (PW2) to demand for N500, 000 for processing the re-instatement letter. Engr. Nicholas (PW2) called Mazi Emmanuel (PW3) and told him, he also gave N300, 000 to Mazi Emmanuel (PW3) who inturn gave the money to Lambert Onwuka (1st Defendant) with the understanding that the balance of N200, 000 will be paid after. Later Lambert Onwuka (1st defendant) demanded for the AGIS acknowledgment letter on the plot and the balance of N200, 000 which he was given. Lambert Onwuka (1st defendant) promised to provide a receipt for the money and along with the re-instatement letter. When Engr. Nicholas (PW2) called Mazi Emmanuel (PW3) to find out the position, he was told that the reinstatement letter was ready. Engr. Nicholas met Mazi Emmanuel in his office and he gave him the reinstatement letter Exhibit B herein but without a receipt. Mazi Emmanuel told Engr. Nicholas that Lambert Onwuka did not bring the receipt. Engr. Nicholas made a photocopy of the letter (Exhibit B) and he pasted it in the land, he also took a copy of the letter to the development control for them to process the building plan. At the development control he was told that their copy should come from AGIS and not from him. He was also told that the letter (Exhibit B) is different from the normal reinstatement letter they use to know. Mr. Nicholas went to AGIS to confirm and he was told that there is no such letter with AGIS. Mr.

Nicholas called Lambert Onwuka and told him that the letter he gave to him (Exhibit B) is not with AGIS. Mr. Nicholas also called Emmanuel and told him that the letter (Exhibit B) is not the right one. Mr. Emmanuel called Mr. Lambert Onwuka and told him that the letter he brought is not the correct one and that Mr. Nicholas has another means of getting the letter. Mr. Lambert Onwuka refunded N200, 000 to Mr. Nicholas. Mr. Nicholas went to AGIS with a copy of the letter for confirmation. He showed the letter to one Mainasara a land officer, who after looking at the letter he instructed one of his officers to take him to EFCC office at the FCDA, for being in possession of a forged reinstatement letter. At the EFCC office Mr. Nicholas was asked to produce Mr. Lambert Onwuka. Mr. Nicholas called Mr. Emmanuel who also called Mr. Lambert Onwuka. And then Mr. Lambert Onwuka called Mr. Nicholas. Mr. Nicholas told Mr. Lambert Onwuka that he needed N20, 000 out of his money. Mr. Lambert Onwuka met Mr. Nicholas while he was in company of two EFCC officers, and he handed over the N200, 000 to Mr. Nicholas. Mr. Lambert Onwuka was arrested and they were taken to EFCC office.

The reinstatement letter (Exhibit B) given to Mr. Nicholas by Lambert Onwuka has Nigeria coat of arm with plot No 1986 and a stamp on it. The name of A.O Oni was written with a biro and the name of the original allottee Pricillia A. Datit.

PW3 Mazi Emmanuel Olugue corroborated the testimony of PW2 Mr. Nicholas. He witnessed all that transpired between Mr. Nicholas and Lambert Onwuka. PW4 Hussani Salihu A. Ismail also corroborated the testimony of PW2 Mr. Nicholas. PW4 was the officer who was instructed by Mainasara the Assistant Chief Land Officer to accompany Mr. Nicholas to the EFCC office, upon citing the letter (Exhibit B). PW4 after he had identified the letter (Exhibit B) he stated thus;

On the face of Exhibit B, there are some prominent features which are not the same with the normal letter of reinstatement issued by AGIS. These are;

1. At the top most right hand side of the letter of reinstatement issued by AGIS, it carries a date while Exhibit B has none.

2. Letters of reinstatement issued by AGIS normally has a heading to wit a letter of re-instatement and Exhibit B has no heading.
3. A letter of reinstatement issued by AGIS does not carry a stamp while Exhibit B has official stamp.
4. Exhibit B has a caption "Our Ref: FCDA/AGIS/S/P/2007" while letters issued by AGIS has no such reference.
5. AGIS letter for reinstatement does not have a telephone no column while Exhibit B has it.
6. The content of Exhibit B is not the format AGIS use in issuing letters of reinstatement.
7. The stamp on Exhibit B is from AGIS but the letter is not from AGIS.
8. On Exhibit B it contains the name Oni O. A, it is not the same name with our staff Mrs. Oni Seun.

PW6 is Mr. Ezekiel Simon a police officer attached to EFCC as an investigator. He told the court during examination in chief and during Cross-examination that Mr. Lambert Onwuka (1st Defendant) refunded the sum of N280, 000. 00 at the EFCC office on the 25/05/2007.

PW7 Mrs. Olu Oluwasheun A. She is a staff of FCDA she told the court that she did not sign Exhibit B. She said the format is totally different from the re-instatement letter issued in her office. And that she is not the officer in charge of signing re-instatement letter. The person in charge is her supervisor whose name is Mainasara Babayo Garba. She said she worked with Mainasara from 2006 to 2008 and she saw most of the documents he signed. The signature on Exhibit B is not the same with the re-instatement letters issued between 2006 and 2008. She also said they don't also use stamp on the reinstatement letters issued.

This is the sum total of the case of the prosecution as distilled from the evidence of the prosecution witnesses. Exhibit G is the sample of Re-instatement letter issued by Mainasara Babayo Garba Assistant Chief Land Officer. A comparison of Exhibit G and Exhibit B shows that there is a clear difference between the two documents. It is not in doubt that Exhibit B is a forged document. Exhibit B is the crux of this case. Based on the statement made by the 1st defendant Onwuka Lambert to EFCC Exhibit A1 herein, the 2nd defendant Omachunu Monday was arrested by the EFCC detectives.

In Exhibit A1 the 1st defendant Onwuka Lambert stated that "..... I work with FCDA Education 2001 – 2007. I know Mr. Nicholas via my brother Mazi Emmanuel who called me and told me that the brother has double allocation/revocation problem but that it was in error, he ask if I know anybody who can assist to solve it. So I called one Mr. Omochu who now told me that he will take N500, 000, 00 to assist.

Mr. Nicholas brought the sum of N300, 000 which I gave to him and after some weeks he brought a letter to me and I gave it to Mr. Nicholas. Some days later Mr. Nicholas called together with Mazi to come to AGIS and meet them that the document which I gave to them was fake. But that they have someone in AGIS who will assist them. That I should balance his money since it is me that he knows. So I agreed to balance him. The next day I went to my in-law and borrowed N200, 000; 00 and gave to him to continue this process of (C.of.O) letter. Today being 14th May 2007, he called me and said he needed N20, 000, 00 for him to give the people working for him. So I brought it to give him then I was arrested by the EFCC. The total money paid was N500, 000, 00 only to me. Then Omochu I gave the money told me he is working with AGIS but now retrenched---

When Omachunu Monday (2nd defendant) was arrested by the EFCC detectives, he also made a statement to EFCC, which is Exhibit D herein. It is important to note that when the prosecution applied to tender Exhibit D, the 2nd defendant retracted the statement. And same was admitted in evidence hence mere retraction of a statement does not render it inadmissible in evidence. Rather the court will admit it in evidence and then later consider the weight to attach to it. From Exhibit D, the statement of the 2nd defendant, it led to the arrest of the 3rd defendant Munir Adamu. In Exhibit D the 2nd defendant stated thus; "-----I know Lambert in AGIS late last year 2006. He said he will help me by giving me Area Council recertification to be submitting for him which I did at time he do give me N1000 and at time N2000 for the work. Sometime this year he approached me to type a letter for him which I gave to one Munir in AGIS to stamp it and I later give to Lambert back the letter with. The letter is for re-instatement of plot 50 Wuye district which was revoked by the Minister FCT. He gave me the sum of N5000 for typing and stamping for the reinstating letter. After the stamping I gave it back to Lambert without

signature on it. The reinstatement was not issued by the Minister. It was forged by Mr. Lambert who ask me to type the letter for him”.

Now the statement of the 1st defendant was admitted without any objection. Hence the 2nd defendant Omachunu Monday has retracted his statement. It becomes necessary to test the statement being confessional in order to determine its veracity. By the authority of the court of Appeal and the Supreme Court, there are six tests to which such confessional statements are subjected to determine their veracity or otherwise before any evidential weight can be attached to them. These are as follows;

1. Is there anything outside the confessional statement to show that it is true.
2. Is it corroborated.
3. Are the relevant statement made in it of facts true as they can be tested.
4. Was the defendant one who had the opportunity of committing the crime.
5. Is his/her confession possible.
6. Is the confession consistent with other facts which have been ascertained and have been proved.

See Jimoh Vs State (2012) 3 NWLR (pt 1286) 144 and Dawa Vs State (1980) 8-11 SC 236.

Exhibit B the forged letter of reinstatement is a material evidence outside the confessional statement to show that it is true. The evidence of PW1, PW2, PW3, PW4, PW5, PW6 and PW7 provides the necessary corroboration of the said statement. The relevant statements made in it of facts are true in-view of Exhibit B which is the forged letter. It is not in dispute that Exhibit B is a forged document. The defendant is one who had the opportunity of committing the crime in view of his relationship and interaction with the 1st defendant Onwuka Lambert and the 2nd defendant Munir Adamu. The confession is possible hence there is any evidence to show that there was any duress, threat, torture or promise. And the confession is consistent with the fact that the Exhibit B is a forged document and there is no any dispute about it. And more so in the said confessional statement the 2nd defendant gave his historical background ie the schools he attended and his occupation. This are facts which are exclusively within his knowledge and not EFCC detectives. I am therefore

convinced that the confessional statement Exhibit D was truthfully made by the 2nd defendant Omachunu Monday. And the court is entitled to attach every weight to it.

The statement made by the 2nd defendant led to the arrest of the 3rd defendant Minur Adamu as earlier mentioned. However, in his own statement Exhibit E which was admitted in evidence without any objection, the 3rd defendant Munur Adamu stated thus; "..... Adamu Othman introduced Monday because he want me to bring somebody that has a land for sale so that he will bring a buyer to buy and share the percentage. Beside that he used to come to AGIS for opening file fresh application. I have been helping him to processed it and it to him after putting stamp sometimes early this year I was in my office Monday came to me he told me that I should help him because the people that are in madam office are not around he want me to go and stamp it for him. Immediately I Minur Adamu I did not read what is written on the paper, he just bring out the paper from envelope and I stamped it and rush out for break hence it was break time, till today that I was called to EFCC office, what I realize that the paper is for reinstatement of a plot No. 50 file No. PL 1986 and EK 10084 old and new file numbers. I did not and never was given any money for the transaction, the stamp it was on the table in madam reception Maryam who was supposed to be on that table went on break. She was not aware I stamped it in her absence this is all I know about this case"

At this stage it is apt to see whether or not the prosecution has been able to establish the offences alleged against the defendants in view of the totality of the evidence before the court. The prosecution has the burden of establishing its case against the defendants beyond reasonable doubt as required by section 135 of the evidence act 2011 and plethora of Judicial authorities. See Bakare Vs State (1087) WSCC 267 and Micheal Vs The State (2008)13 NWLR (pt 1104) 361.

Let me begin with count two which deals with conspiracy under section 96(1) of the Penal Code Act Cap 532 CFN (Abuja) 1990 and punishable under section 364 of same act. Conspiracy as an offence is the agreement by two or more persons to do or cause to be done an illegal act or legal act by illegal means. The actual agreements alone constitute the offence and

it is not necessary to prove that the act has in fact been committed. See *Obiako Vs. The State* (2002) 6 SC (pt 11) 33 at 39-40. It has been established in a plethora of judicial authorities that for the offence of conspiracy to be established there must exist a common criminal design or agreement by two or more persons to do or omit to do an act criminally. And since the gist of the offence of conspiracy is embedded in the agreement or plot between the parties it is rarely capable of direct proof, it is invariably an offence that is inferentially deduced from the acts of the parties thereto which are focused towards the realization of their common or mutual criminal purpose. See *Patrick Njovens & Ors Vs. The State* (1973) 5 SC 17, *Dabo & Anor Vs. The state* (1977) 5 SC 222, *Erim Vs State* (1994) 5 NWLR (pt 346) 535 and *Oduneye Vs. The State* (2001) 1 sc (pt 1) 1 at 6 – 7.

Therefore it is sufficient for the purpose of proving conspiracy to adduce such evidence as would lead to the conclusion that the act and or conduct of each of the conspirators is performed in the cause of single purpose and for the achievement of the same objective. Consequently in order to establish a conspiracy it is not necessary to prove that the conspirators like those who murdered Julius Ceasar were seen coming out of the same place at the same time.

In this instant case there is sufficient evidence which proved that the act and or conduct of each of the three defendants was performed in the course of a single purpose and for the achievement of the same objective. In other words when Mr Nicholas PW2 informed Mazi Emmanuel PW3 about the revocation of his plot of land and the letter he wrote to the Minister FCT for reconsideration. Mazi Emmanuel (PW3) called the 1st defendant Onwuka Lambert and introduced him to Engr. Nicholas. The 1st defendant Onwuka Lambert promised to assist and according to the 1st defendant he contacted the 2nd defendant who demanded for N500; 000, 00 in order to obtain the letter of reinstatement 1st defendant said he first of all collected N300, 000, 00 which he gave to the 2nd defendant Omachunu Monday. And he gave the balance of N200, 000, 00 to the 2nd defendant Omachunu Monday after he brought the reinstatement letter ie Exhibit B. This piece of evidence is contained in Exhibit A1 the statement of the 1st defendant. However, on his part the 2nd defendant in his statement Exhibit D he stated that the 1st defendant approached him to

type a letter for him which he gave to one Munir the 3rd defendant in AGIS to stamp it and he later gave it to Lambert (1st defendant).

He said the letter is for reinstatement of plot B03 Wuye plot 50 Wuye district which was revoked by the Minister FCT. The 2nd defendant also said Lambert (1st defendant) gave him N5000 for typing and stamping. He said the reinstatement letter was not issued by the Minister it was forged by Mr. Lambert who asked him to type the letter for him.

Similarly, the 3rd defendant Minur Adamu in his statement in Exhibit E he stated that sometime he was in his office Monday (2nd defendant) came to him that he should help him because the people that are in Madam office are not around he want him to go and stamp it for him. Immediately he Minur Adamu did not read what is written on the paper he just bring out the paper from envelope and he stamped it and rushed out for break since it was break time. From this piece of evidence, it is crystal clear that the three defendants were acting in concert, ie to forge a recertification letter Exhibit B herein. The act or conduct of each of the three defendants was done in the cause of a single purpose and for the achievement of the same objective ie to forge a recertification letter ie Exhibit B. It is my finding that the prosecution has established the offence of conspiracy against the three defendants.

Count one deals with the offence of obtaining the sum of N500,000 by false pretence contrary to section 1(1) (a) of the advance fee fraud and other related offences Act 2006. In order to establish this offence the prosecution must establish the following essential ingredients thus;

1. That there was false pretence made by the accused person.
2. That the accused person obtained property as a result of the false pretence from the said person.
3. That the accused did same with intent to defraud.

The crux of these offence lies on false pretence. It is therefore important to look at the definition of false pretence. Section 20 of the Act provides, a false pretence means a representation whether deliberate or reckless made by word in writing or by conduct of a matter of fact or law either past or present which representative is false in fact or law and which the person making it knows to be false or does not believe to be true"

One fact which is not in dispute from the totality of the evidence before the court is that the 2nd defendant Omachunu Monday and the 3rd defendant Munir Adamu had no contact whatsoever with Engr Nicholas the nominal complainant and PW2 who gave the sum N500, 000,00 for the reinstatement letter. There is no evidence to show that the 2nd defendant or the 3rd defendant made any false pretence to Engr. Nicholas in order to obtain the sum of N500, 000, 00. Rather the undisputed evidence before the court shows that when Mazi Emmanuel PW3 introduced the 1st defendant Onwuka Lambert to Engr. Nicholas. The 1st defendant promised to assist Engr. Nicholas to get the reinstatement letter. After some few days the 1st defendant called Engr. Nicholas and demanded for N500, 000, 00 for the processing of the reinstatement letter. It is also in evidence that Engr. Nicholas paid the sum of N500, 000, 00 to the 1st defendant in two installments. Firstly he paid N300, 000, 00 and then N200, 000, 00 when the 1st defendant submitted Exhibit B the forged reinstatement letter. However in his statement Exhibit A1 the 1st defendant stated that he gave the money to Omachunu Monday. Section 1 (a) of the Advance fee fraud and other fraud related offences Act provides;

1. Notwithstanding anything contained in any other enactment or law any person who by false pretence and with intent to defraud (a) obtains from any other person in Nigeria or any other country for himself or any other person is guilty of an offence under this Act.

Now therefore the fact that the 1st defendant stated that he collected the money and gave it to the 2nd defendant Omachunu Monday, he is not exonerated from committing the offence. It has been established that the 1st defendant collected the total sum of N500, 000, 00 in two installments from Engr. Nicholas under the false pretence that he will assist him, to get a letter of reinstatement for plot 50 Cadastral Zone BO3 Wuye District Abuja. The false pretence is that the 1st defendants promised to assist Engr. Nicholas to get the letter of reinstatement. And the sum of N500, 000, 00 was obtained as a result of the false pretence. The logical conclusion is that the 1st defendant did same with intent to defraud; having known that he was not in a position to assist Engr. Nicholas to get a letter of reinstatement. It is my finding which I so hold that the prosecution has established the offence of obtaining the sum of N500, 000, 00 by false pretence against the 1st defendant Onwuka Lambert beyond reasonable doubt. It is also my finding that the prosecution has failed to establish the

offence of obtaining the sum of N500, 000 by false pretence against the 2nd and 3rd defendants and I so hold.

Court three deals with the offence of fraudulently making a document contrary to section 364 of the Penal Code Act Cap 532 LFN (Abuja) 1990 making a false document is defined by section 362 of the Penal Code while forgery and forged document is defined by section 363 of same law. On a charge of forgery, the prosecution must prove that the accused made a false document or writing knowing it to be false and with intent that it may be used as and acted upon as genuine. A document or writing is said to be false in the case of a document which purports to be issued by lawful authority as testifying to any fact or event if any material particularly stated in the document is untrue. See I.G.P Vs George Digest of the Supreme Court 1956-84 Vol 10 245. In the instant case it is not in doubt that Exhibit B is a forged document. It is the original document that was forged. Exhibit B was intended to be used and acted upon as a genuine document ie a letter of reinstatement issued by AGIS. The prosecution tendered in evidence Exhibit G which is the standard format of a letter of reinstatement that is usually issued by AGIS. The prosecution called PW4 Hussaini A. Ismail who gave evidence and distinguished between Exhibit B which is the original forged document and the standard format of a letter of reinstatement. And he concluded that Exhibit B did not emanate from AGIS. The prosecution also called PW7 Olu Oluwasheun, whose signature was forged on Exhibit B. PW7 stated that the signature on Exhibit B is not her signature.

In other words, she has disproved the genuineness of Exhibit B. She stated further that she is not the officer in charge of signing reinstatement letter. The person in charge is her supervisor Mr. Mainasara Babayo Garba. It has been established beyond reasonable doubt that Exhibit B is a forged document. The question that will follow is that who forged Exhibit B? The prosecution must prove that the defendants made a false document from the evidence before the court. It is crystal clear that it was the 1st defendant who gave Exhibit A1 to Engr. Nicholas. The 1st defendant stated in his confessional statement that the 2nd defendant gave him the document. While the 2nd defendant stated that it was the 1st defendant who gave him Exhibit B to type which he did and he gave it to the 3rd defendant to stamp it. The 3rd defendant in his statement he admitted that

Exhibit B was given to him by the 2nd defendant for him to stamp it which he also did. I am convinced that each of the defendants took part in the act of forgery ie in making a false document which is Exhibit B. Each of the three defendants confessed to their participation in making of Exhibit B. See Exhibit A1, Exhibit D and Exhibit E respectively. It is settled law that an accused may be convicted on the basis of his confessional statement where the confession is supported and consistent with other evidence. See State Vs Bako Digest of the Supreme Court 1956-1984 Vol 10 at 50. The statement of the 1st defendant Exhibit A was admitted without any objection and likewise Exhibit E the statement of the 3rd defendant. But Exhibit D was retracted by the 2nd defendant. There is sufficient evidence which corroborates Exhibit D and therefore a conviction can be based on retracted confession which has been corroborated. In conclusion, I am satisfied that the prosecution has proved beyond reasonable doubt that the 1st, 2nd and 3rd defendant's made Exhibit B, a forged letter of reinstatement and I so hold count four deals with using a forged document contrary to section 366 of the Penal Code and punishable under section 364 of same law. I do not think I should belabor on the fourth count charge. Reasons being that Exhibit B, the forged document was used by Engr. Nicholas when he took it to the Development Control Department for the processing of his building plan approval. He believed that it was a genuine document. Engr. Nicholas also took Exhibit B to the AGIS where it was confirmed to him that it was forged. And the matter was reported to EFCC. The document in Exhibit B was for Engr. Nicholas to use as a genuine document. Having established the offence of forgery against the defendants, it will be superfluous to proceed against them for the offence of using a forged document. I am not convinced that the act of giving Exhibit B to Engr. Nicholas amounts to using a forged document. In other words, I hold that the prosecution has failed to establish the offence of using a forged document beyond reasonable doubt against the defendants consequently count four is liable to fail.

The 2nd and 3rd defendant had jumped bail, section 352 (4) of the ACJA 2015 allow the court to continue with the trial in the absence of the defendant. But the 1st defendant is in court and he entered his defence. It is therefore necessary to consider the defence put up by the 1st defendant or his counsel. The defence put up by the 1st defendant in his evidence in chief is substantially the same with his confessional statement. He stated

that as at May, 2007 he was a staff of FCDA Education Department. He stated that he met Engr. Nicholas through Mazi Emmanuel. He said Engr. Nicholas asked him to assist him to get a letter of reinstatement for his land at Wuye Abuja, which was revoked by the Minister and he told the Engr. Nicolas that he is not a staff of AGIS for him to know the procedure to handle such a problem. Engr. Nicholas told him he met Minur Adamu (3rd defendant) a staff of AGIS who said he will assist in the process of reinstating the level. He said while they were discussing Monday Omachunu 2nd defendant was with him, and he said he knew Munir Adamu a staff of AGIS. He now told Monday to meet Munir Adamu he knows what it will take to get the reinstatement. Mr. Nicholas said he wants the 1st defendant to assist him to monitor the process, which he agreed. And after Monday had discussed with Munir Adamu, he told the 1st defendant that Munir Adamu requested for N500, 000, 00 to process the land reinstatement for Mr. Nicholas. The 1st defendant reported to Mr. Nicholas and Mazi Emmanuel what Monday told him. Mr. Nicholas paid N300, 000, 00 as part payment. And the 1st defendant called Monday and gave him the money after two weeks. Monday called him and told him that the document is ready for collection and the balance of N200, 000, 00 be paid. He called Mr. Nicholas to come and collect the document. And Mr. Nicholas brought the N200, 000, 00 which he gave to Monday.

Without much ado I must state that it is patently difficult to believe the defence put up by the 1st defendant. Law, logic and even common sense do not support such a defence. The 1st defendant who was a staff of FCDA Education Department, even though he was not a staff of AGIS he knows that it is very unreasonable for anyone to demand for N500, 000, 00 for the processing of a letter of reinstatement. And more so there is no evidence to show that there was an official receipt issued for the processing of the letter of reinstatement. One would therefore ask what was the justification for the payment of N500, 000, 00. For this reasons, I do not believe the evidence of the 1st defendant. I am convinced that the 1st defendant has failed to put up any credible defence. On the other, hand I am satisfied that the prosecution has established its case beyond reasonable doubt against the three defendants on the second count of conspiracy contrary to section 96 (1) of the Penal Code and punishable under section 364 of same. And I convict the three defendants on the second count charge.

I am also satisfied that the prosecution has established its case beyond reasonable doubt against the 1st defendant on the first count charge of obtaining by false pretence contrary to section 1 (1) (a) of the Advance fee fraud and other related offences Act 2006. And punishable under section 1 (3) of same Act. However the prosecution has failed to establish its case against the 2nd and the 3rd defendant on count one. Accordingly the 2nd and 3rd defendant are hereby discharge on count one.

On the 3rd count charge, I am satisfied that from the totality of the evidence before the court the prosecution has established its case beyond reasonable doubt against the three defendants, thus the offence of fraudulently making a document contrary to section 366 of the penal code and punishable under section 364 of same. Accordingly, I convict the three defendants on count three.

On count four the prosecution has failed to establish its case against the three defendant thus, using as genuine a forged document contrary to section 366 of the penal code and punishable under section 364 of same. Accordingly the three defendants are hereby discharged and acquitted on count four.

Appeal is allowed to the Court of Appeal.

Signed: HON. JUSTICE A.M. TALBA – PRESIDING JUDGE
9/5/2017

T.N. Ndifon for the prosecution
A.G. Ochigbo holding the brief of Marcus Abu
with Ruth Eze Mrs. for the defendant

Def. Counsel: We are sorry the last time the case came up for judgment the defendant was not in court. It was his mistake as to the date. We sincerely apologies.

Pros: The case is for judgment.

Court: Judgment delivered.

Signed: HON. JUSTICE A.M. TALBA – PRESIDING JUDGE
9/5/2017

Pros: We are grateful for the judgment. Having convicted the 1st, 2nd and 3rd defendant on count two we urge the court to sentence the 1st defendant accordingly. And suspend the sentencing of the 2nd and 3rd defendant, pending when they will be rearrested and surrendered before the court in line with section 352 (5) of the ACJA 2015.

So also applicable to count one we urge the court to sentence the 1st defendant in respect of counts one.

We adopt our first submission in respect of count three. And sentence the 1st defendant and suspend the sentencing of the 2nd and 3rd defendant pending when they will be rearrested and surrendered before the court in line with section 352 (5) of the ACJA 2015.

Def. Counsel: We appreciate the court for a well considered judgment. However in sentencing the 1st defendant we urge the court to temper justice with mercy. The 1st defendant is a first offender. He has a family with children. The 1st defendant is a man standing with one kidney so

biologically he is not normal. We urge the court to put all this facts into consideration in sentencing the 1st defendant.

Pros: there is no record of previous conviction against the 1st defendant.

Court: After conviction what follows next is sentencing. Recently the Hon. Chief Judge of FCT signed the sentencing practice direction. It is therefore important to look at the sentencing guide lines in imposing a sentence on the 1st convict for this reason I will adjourned to 10/5/2017 for sentencing. The convict is to be remanded in prison custody pending his sentence.

Signed: HON. JUSTICE A.M. TALBA – PRESIDING JUDGE
9/5/2017

SENTENCE

The plea for leniency made by learned defence counsel on behalf of the 1st convict has been considered. I have also considered section 401 (2) ACJA 2015 which is in consonance with part one paragraph 1 (2) (b) of the FCT courts (Sentencing Guidelines) practice direction 2016. I have equally considered part 3, paragraph 12 (3) of the sentencing guidelines which provides that where the statute permits the exercise of any sentencing discretion the judge shall proceed to apply the provisions of paragraphs 13-20. The offences in count 2 and 3, the punishment section permits the exercise of sentencing discretion while the offence in count 1 the punishment section permits the exercise of sentencing discretion but with a limitation.

In count one the punishment section is section 1 (3) of the Advance fee fraud and other fraud related offences Act 2006, it provides;

1 (3) A person who commits an offence under subsection (1) or (2) of this section is liable on conviction to imprisonment for a term of not more than 20years and not less than 7years without the option of a time. The exercise of sentencing discretion is limited in the sense that the judge can only exercise its discretion to impose imprisonment for a term of 20years or below, but not less than 7years. And without an option of fine.

Consequently on the first count charge I sentence the 1st convict Onwuka Lambert to 7years imprisonment without an option of fine.

In count two the punishment section is section 364 of the Penal Code Act Cap 532 LFN (Abuja) 1990, it provides 364. Whoever commits forgery shall be punished with imprisonment for a term which may extend to fourteen years or with fine or with both.

This section permits the exercise of sentencing discretion. Pursuant to section 352 (5) of the ACJA 2015 the court shall not impose sentence on the 2nd convict Omachunu Monday and the 3rd convict Minur Adamu after their arrest or when they surrendered themselves to the custody of the court.

However the 1st convict Onwuka Lambert is sentenced to 7years imprisonment or a fine of N50, 000.

In count three the punishment section is section 364 of the Penal Code Act Cap 532 LFW (Abuja) 1990 which is the same with the punishment section in count two. Similarly the court shall not impose a sentence on the 2nd convict Omachunu Monday and the 3rd convict Munir Adamu until after their arrest or when they surrendered themselves to the custody of the court. While the 1st convict Onwuka Lambert is sentenced to 7 years imprisonment or a fine of N50, 000, 00. The sentence to run concurrently.

Signed: HON. JUSTICE A.M. TALBA – PRESIDING JUDGE
10/5/2017

10 - **5** - **2017**
J. Bwala for the prosecution
Ruth Eze Mrs. For the convict

Court: Sentence delivered.

Signed: HON. JUSTICE A.M. TALBA – PRESIDING JUDGE
10/5/2017